

Cooperating Agency Status Report

**“A Report on the Current Status and Identification of
Solutions to Improve Cooperating Agency Status in Wyoming”**

**Prepared by the:
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Executive Summary

A growing number of opportunities for the participation of state, local, and tribal governments, known as cooperating agency status, has become a reality in federal land planning and management in Wyoming. Cooperating agency status has been identified and defined by the National Environmental Policy Act and the Council of Environmental Quality regulations (see NEPA, Title 1, Section 102 (E) and CEQ regulations 1501.1 (b), 1501.2(c), 1501.6(a)(2), 1502.2(f)). In addition to NEPA and CEQ direction there have been several other policy directives regarding cooperating agency participation. For example, the Bureau of Land Management issued an instructional memorandum on August 20, 2004 (IM No. 2004-231) titled, "The Scope of Collaboration in the Cooperating Agency Relationship." Cooperating agency status has also been defined in a BLM's proposed rule posted in the Federal Register on July 20, 2004 (RIN 1004-AD57) and most recently defined by President Bush on August 26, 2004 in the Executive Order of Cooperative Conservation. These documents define the federal government's desire for increased cooperation as well as set parameters for how that participation should take place.

Cooperating agency status in Wyoming has been viewed positively by both federal agencies and local cooperators. With the help of interested parties, the Governor's State Planning Office examined the current state of cooperating agency status in Wyoming to determine how this concept is functioning in reality. This report summarizes the findings. It includes a list of suggestions presented by a focus group during a cooperator improvement scoping meeting held in September 2004.

Examination Scope

Telephone Interviews

To identify the status of cooperators' experiences, the State Planning Office conducted telephone interviews with participants of current and past federal planning projects. These telephone interviews were conducted with available county commissioners, conservation districts, state agencies, BLM field office employees and Forest Service planners in August 2004. Participants were asked to describe their involvement and provide their perspective on their experiences as a cooperator or a federal agency employee working with cooperators. The results of the phone interviews revealed that although most people feel that cooperating agency status was a good idea, and has worked well in some instances, it is not perfect and is need of improvement. A detailed summary of the interviews is included in this report.

Cooperator Improvement Scoping Meeting

The State Planning Office hosted a focus group meeting to discuss potential solutions on how to improve the cooperating agency process in Wyoming. Participants with varied cooperating agency experiences identified many solutions to improving the process. These solutions included the facilitation and conflict resolution training for federal project leads, allowing cooperator participation as early as possible, preparing mutually respectful Memorandums of Understanding (MOUs), and developing a better

understanding of the parameters for participation. A summary of the suggestions is available in the report.

Next Steps

One of the largest areas identified for improvement by the cooperating agency focus group was the need for training at a variety of levels for local, state and tribal cooperating agency participants. The State Planning Office is currently planning a training session that will include not only a general NEPA training but also an in-depth training on USFS and BLM rules and regulations.

Cooperating Agency Report:

Wyoming has led the way for increasing levels of cooperation between federal agencies, state agencies, and local governments through involvement in the federal planning process using cooperating agency status. Cooperating agency status is afforded through the National Environmental Policy Act (NEPA). As indicated in James Connaughtons's January 30, 2002 Memorandum for the Heads of Federal Agencies;

“The benefits of enhanced cooperating agency participation in the preparation of NEPA analyses include: disclosing relevant information early in the analytical process; applying available technical expertise and staff supports; avoiding duplication with other Federal, State, Tribal and local procedures; and establishing a mechanism for addressing intergovernmental issues. Other benefits of enhanced cooperating agency participation include fostering intra-and intergovernmental trust and a common understanding and appreciation for various governmental roles in NEPA process, as well as enhancing agencies' ability to adopt environmental documents.

The number of federal projects in Wyoming that have included cooperators is steadily increasing. Because Wyoming has been one of the first states to embrace cooperating agency status, state, local and federal agencies have experienced numerous issues related to the cooperating agency process.

The State Planning Office, under the direction of Governor Dave Freudenthal, is working on ways to improve cooperator agency status. The first step was to identify the current status of cooperators' experiences in the process. The Planning Office completed telephone interviews in fall 2004 with participants of current and past federal planning projects that have involved cooperating agencies. The purpose of the interviews was to examine the breadth and intensity of issues and successes which cooperators and federal agencies have had.

I. Cooperator Telephone Interviews

Available county commissioners, conservation districts, state agencies, BLM field office employees, and Forest Service planners were interviewed in August of 2004. Notification that the interviews would take place was provided to the Forest Service, BLM, Wyoming County Commissioners and Wyoming Conservation Districts.

Participants were asked to describe their involvement and evaluate their experiences as a cooperator or a planner. They were asked what they would like to see done in the future to remedy the problems or secure future positives experiences that they had identified.

The results of the interviews revealed that most people felt that cooperating agency status is a good idea and has worked very well in some instances. However, the interviews highlighted the fact that the cooperating agency process in Wyoming is not perfect and needs improvement. The William D. Ruckelshaus Institute of Environmental and Natural Resources conducted an “Evaluation of the State of Wyoming’s Experience as a Cooperating Agency” in 2002 and reported a similar finding.

The following is a summary of the August phone interviews.

Communication

- ◆ All interviewees felt that cooperating agency status has the potential to foster communication and a good relationship between federal agencies and local governments when done well.
- ◆ Cooperators recommended that they receive a monthly update from the federal agencies on the current and future status of projects. This would allow the cooperators to stay informed.
- ◆ Cooperators felt that the Forest Service, BLM and State Planning Office need to provide an up to date list of cooperators, both local and state. This will ensure that no one is left out.
- ◆ Some federal agency personnel suggested that a “ground floor up” approach that involves participants early may reduce protests or appeals later.
- ◆ Both cooperators and federal agencies identified a need to better define what cooperating agency status is and what it allows in terms of participation.
- ◆ Both cooperators and federal agencies identified good facilitation of meetings with cooperators as critical to a successful outcome.

Trust Level

- ◆ Local government cooperators commented that the initial meetings with federal agencies and cooperators set the trust level with the agencies. For example, some suggested that if cooperators are discouraged from giving input in the beginning stages, they feel as if it would be a “waste of time” to continue as a cooperator.

- ◆ Some cooperators commented that the inclusion of local cooperators increases the input of the local perspective and demonstrates how a NEPA decision will affect the communities.

Federal Agencies

- ◆ Cooperators reported that a few of the BLM field office employees have indicated that they felt that county officials were interfering in their planning efforts.
- ◆ A few cooperators have suggested that some federal employees don't want county participation, and until this changes, participating as a cooperating agency is going to be a difficult process.
- ◆ The federal agency personnel indicated that they value the cooperators input.
- ◆ Cooperators highlighted the fact that there are vast differences in how cooperating agency efforts are managed between BLM offices.
- ◆ Some cooperators mentioned that they felt that agency decisions are based on old, outdated data that is not based on the best available science.

Cooperators

- ◆ Both federal agency personnel and cooperators reported that the process works well when the cooperators are engaged in the process.
- ◆ Local cooperators suggested that they and other cooperators need to be smarter, and that means they have to have legal backing to deal with NEPA.
- ◆ Local cooperators have identified that they haven't had the necessary tools to actively participate as a cooperator.
- ◆ Local cooperators commented on the fact that cooperating agency status is a huge responsibility, and you really have to read everything to be able to give accurate input. This is difficult for cooperators who face financial and time constraints.

Local Knowledge

- ◆ Local cooperators commented that when the federal agencies are working on projects, they do not know how to properly address or incorporate the local characteristics and culture as well as the county land use plans. Specifically, economic impacts to the counties need to be a focus.
- ◆ Conservation districts would like to have the agencies consider their long range plans when working on a project.

Timing

- ◆ Cooperators feel that federal agencies need to involve cooperators as early as possible.
- ◆ Cooperators reported that the some lead agencies have not provided enough time for comments.
- ◆ Federal agency personnel commented that cooperators need to understand that at times, review time is limited.
- ◆ Some BLM offices have been very good about scheduling meetings around cooperators' schedules.

- ◆ Cooperators commented that some federal agencies are always on a time crunch at the end of the project. They noted that they often have a week to review an entire document, which is insufficient to provide appropriate input.
- ◆ Cooperators indicated that it is hard for them to get to the meetings, and would like to find an alternative way to comment or be involved even if they can't attend the meetings.

Training Needs

- ◆ Both cooperators and federal agency personnel indicated that this is a confusing process; and all agreed that education is the key to success.
- ◆ Cooperators would like to know what the agencies want or need from them.
- ◆ Cooperators need to figure out the true cost of participating as a cooperating agency for budget purposes.
- ◆ Cooperators would like to have training on how to write alternatives.
- ◆ Cooperators indicated that they would like to have training on how to write MOU's.
- ◆ Cooperators indicated that they need training on federal agencies' planning processes (both BLM and USFS regulations).
- ◆ Local cooperators commented that there should be a booklet that can be handed to local government officials that includes FLPMA, NEPA, ESA, and agency rules and regulations so that the local government officials can educate themselves.

Pre-Decisional Information

- ◆ Cooperators indicated that it is hard to fully participate when they are not getting all the information. It would generally be more positive if federal agencies would release more information.

Plan Implementation

- ◆ Cooperators felt that plan implementation should also involve cooperators.

Participants

- ◆ Cooperators and federal agency personnel indicated that too many people may slow down the process.
- ◆ Several cooperators mentioned that meetings can be intimidating when there are 50 agency personnel and one cooperator.

Public Involvement

- ◆ Cooperators feel that there should include more access points for public participation in the planning process. More opportunities to review the document as it progresses will reduce misconceptions.
- ◆ Cooperators suggested that coordinated resource management groups could be used as a way to get people together to discuss issues and problems both before and after decisions.

Pre-determined Outcomes

- ◆ Cooperators indicated that they felt that federal agencies should not ask for cooperator participation if they have already predetermined the outcome.
- ◆ Cooperators also reported that in some instances, alternatives prepared by cooperators haven't been recognized or considered by the agencies.

Contractors

- ◆ Cooperators were concerned that third party contractors working on federal projects have sometimes not incorporated cooperator comments into the document.
- ◆ Cooperators indicated that when the information exceeds their expertise, they need to be able to bring in designated people who have the knowledge.
- ◆ Cooperators felt that some of the agencies' contractors were focused on managing time and not input.

Advocacy Groups

- ◆ Federal agencies reported that advocacy groups have in the past used counties to try to change agency plans.

Planning Office

- ◆ Federal agency personnel indicated that when sending documents to the Planning Office, it is often confusing as to whom to send things to and how many copies they need.
- ◆ Local cooperators suggested that they were given a great toolbox in allowing for cooperating agency status, but the toolbox was empty. The state could fill this toolbox by increasing and distributing money to the local governments and by providing training.
- ◆ Cooperators suggested that the Planning Office should work to help make uniform how the BLM deals with cooperating agencies. There is no standard of procedures for how the BLM operates with cooperating agencies.
- ◆ Cooperators also indicated that there should be better communication between cooperators and the Planning Office.
- ◆ Local cooperators suggested that if the State Planning Office is going to continue to take an active role in the cooperating agency process then their role should be well defined and understood by all cooperators.

Memorandums of Understanding (MOU)

- ◆ Cooperators indicated that in some cases it has been a struggle to become recognized as a cooperating agency and some times it can take a couple of years to get a MOU approved.
- ◆ Cooperators reported that a good MOU can go a long way. And in fact the meat of a cooperative agreement is the MOU which needs to be as specific as possible. This could mean the inclusion of specific turnaround dates and times.
- ◆ Some cooperators are hesitant to work on a project without a MOU and there is a large time gap in the amount of time it takes to get them approved by an agency.

- ◆ Cooperators suggested that a MOU template could ease the time it is currently taking to have a MOU approved by an agency. Or perhaps, MOU's could be signed in advance and be on file with the agencies that way there is already an understanding of cooperation.

Best Available Science

- ◆ Cooperators have indicated that they may need to hire special expertise so they can include the best available science in their comments. Cooperators indicated that they can't base their comments on wants and needs but instead need to base them on sound science.
- ◆ Cooperators said that they need the resources to be able to hire contractors so they can actively participate. This funding should come from the Natural Resource Policy Fund.

II. Cooperator Improvement Scoping Meeting

On September 21, 2004 the Governors State Planning Office hosted a focus group discussion to solicit ideas on how to improve the cooperating agency process. A range of people with varied cooperating agency experiences with the federal planning process were invited. Below is a summary of the problems and solutions that were identified by this focus group.

Participants included:

Don Simpson (BLM), Walt George (BLM), Jane Darnell (USFS) Bryan Armel (USFS), Mike Retzlaff (USFS), Bobby Frank (Wyoming Association of Conservation Districts Executive Director), Rodger Wilson (Sheridan County Conservation District), Frank Eathorne (Converse County Commissioner), Doug Thompson (Freemont County Commissioner), Tim Morrison (Meeteetse County Conservation District), Susan Child (Wyoming Office of State Lands and Investments), Don Christensen (Wyoming Department of Agriculture), Matt Hoobler (Wyoming Department of Agriculture), Vern Stelter (Wyoming Game and Fish Department), Bill Haagenson (Wyoming State Forestry), Darla Potter (Wyoming DEQ), Mary Flanderka (State Planning Office), Ryan Lance (State Planning Office), Temple Stevenson (State Planning Office), others were invited and could not attend.

Notes From the:
Cooperator Improvement Scoping Meeting
Focus Group Discussions

“Recommending specific ways to improve the effectiveness of cooperator agency and federal agency efforts and actions”

<i>Identified Problems</i>	<i>Solutions</i>
Personality and communication differences impede the process and ultimately restrict good solutions.	<ul style="list-style-type: none"> • Agencies and cooperators need to pick good representatives; • Federal agencies leads need to have good facilitation and interpersonal skills; • Facilitation and conflict resolution training for planners and cooperating agencies designees.
Information available before decisions is insufficient and is not adding value to the process.	<ul style="list-style-type: none"> • Dissolve or reduce the limitations of sharing pre-decisional information; • Modifying the process to increase local participation before draft. (General public access)
Timelines and priorities are often not followed.	<ul style="list-style-type: none"> • Stick to timelines • Stick to priorities • Cooperators maintaining high attendance to meetings
Agencies and cooperators tend to focus on what they don't want and less on what they do want.	<ul style="list-style-type: none"> • Cooperators need to incorporate what they do like into their comments as well as what they don't; • Provide solutions at meetings and in comments; • Federal agencies and cooperators need to start with positives when possible; • Change mindset to look for positive solutions.

<i>Identified Problems</i>	<i>Solutions</i>
A lack of training slows the process down because it leads to poorly formed decisions.	<ul style="list-style-type: none"> • State should provide training that includes NEPA, FLPMA, MUSYA, state and agency regulations, and local planning and zoning prescriptions; • Federal agencies should be in attendance at the cooperating agency training to answer questions; • Federal project leads need to know their own regulations.
Cooperators lack technical expertise and organization to add value to the process	<ul style="list-style-type: none"> • Cooperators and agencies need to identify their needs as early as possible; • Cooperators may need to hire contractors when necessary; • State Natural Resource Account to fund cooperators needs.
Unclear roles for cooperators and different expectations of the process	<ul style="list-style-type: none"> • Prepare a clear and concise MOU that is black and white; • NEPA states that cooperators should provide information based on expertise and jurisdiction of the resources that they are responsible for; • Recognize all roles and responsibilities (Federal, State, and Local).
Federal agencies are guarded with cooperating agencies	<ul style="list-style-type: none"> • Discussions of decision criteria before beginning efforts; • Acknowledgment that there is pressure from above, i.e. Washington; • Explanation by lead agency as to what process is being used and what they expect; • Training for federal agencies on their responsibility to utilize cooperating agency status.

<i>Identified Problems</i>	<i>Solutions</i>
Negative attitude on the part of federal agencies concerning cooperating agencies and the feeling that cooperators are an impediment to their process.	<ul style="list-style-type: none"> • Negotiate a mutually respectful MOU; • Cooperators should understand the circumstances that they can influence; • Have lead agency explain early their process and opportunities for input.
Cooperator input is ignored which leads to disappointing results and ultimately appealed final decision.	<ul style="list-style-type: none"> • Need cooperators involvement from the beginning of the process; • Agencies need to be receptive and incorporate valid comments; • Understanding of parameters going into a project (side boards).
Lack of understanding as to the role science and politics play in the planning process.	<ul style="list-style-type: none"> • Common understanding of what credible science means; • Planning is not a science, but based on science; • Politics is apart of the process and needs to be acknowledged.
Lack of trust between cooperators and federal agencies.	<ul style="list-style-type: none"> • Improving communication and understanding among participants as to the roles and the process will contribute to trust; • All interests should be at the table; • Recognize other's roles.
Federal contractors have too much influence into the process and lack the knowledge of the area.	<ul style="list-style-type: none"> • Provide training to contractors • Limit control the contractors have in meetings when addressing cooperators concerns and input. • Agencies should ensure that contractors are taking cooperator comments into consideration.